Supreme Court of the United States.

PAUL J. PETIT,
Plaintiff in Error,
VERSUS
STATE OF MINNESOTA,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR DEFENDANT IN ERROR

Statement of the Case.

Plaintiff in error, one Paul J. Petit, was arrested by virtue of a complaint and warrant issued thereupon for a violation of Section 6513 of the General Statutes of Minnesota for 1894, which complaint was in the following terms:

> "State of Minnesota, County of Hennepin ss.
>
> Municipal Court, City of Minneapolis.
>
> "William McQuid, being duly sworn, makes complaint to the above named court, and says that, on the 6th day of March, A. D. 1898, at the city of Minneapolis, in said county of Hennepin and state of Minnesota, Paul J. Petit, then and there being, did wilfully, unlawfully, and wrongfully do and perform labor on said

day, which said day was then and there the first day of the week, commonly called Sunday, in that said Paul J. Petit did then and there keep open a barber shop, for the purpose of cutting hair and shaving beards, at that certain barber shop known, designated and described as number 600 Nicollet Avenue, and did then and there in said barber shop, wilfully, unlawfully and wrongfully shave with a razor the face and beard of one John Doe, whose true name is to complainant unknown, which said labor so done as aforesaid was not then and there a work of necessity or charity, contrary to the statute in such case made and provided, and against the peace and dignity of the state of Minnesota.

Wherefore, complainant prays that said offender may be arrested and dealt with according to law.

"W. McQUOID.

"Sworn to and subscribed and complained of before me this 7th day of March, A. D. 1898.

"H. MOORE,

"Deputy Clerk of Municipal Court."

The case was tried March 16, 1898, by the Court without a jury; defendant was convicted and on March 28, 1898, was "ordered" to pay a fine of ten dollars, and in default thereof, be imprisoned in the workhouse of the City of Minneapolis, until said fine was paid, not exceeding ten days, with stay of sentence, and an appeal was taken from the order of the said municipal court denying defendant's motion for a new trial.

The cause was brought on for hearing before the

Supreme Court of Minnesota, and under date of December 2nd, 1898, the said Supreme Court filed its opinion in the same, holding adversely to the contentions of the defendant below, the cause being *State vs. Petit*, 77 N. W. R. 225, and deciding in favor of the validity of the entire act, including the proviso. Whereupon, and on 3rd day of January, 1899, a Writ of Error to this Court was sued out by plaintiff in error.

At the trial no evidence was introduced on the part of the defendant below, he resting at the close of the State's case.

THE LAW IN CONTROVERSY.

"All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community; Provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity."

Section 6513, General Statutes of Minnesota for 1894.

THE QUESTION IN ISSUE.

Does this law conflict with and violate that clause of the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law?

ARGUMENT.

SUNDAY LAWS IN GENERAL.

Sunday laws from the time of the English statute, 29 Car. II., down to the present, have been universally recognized as valid legislative enactments and not in derogation of the several State Constitutions, which usually contain the same provisions forbidding class and special legislation, and practically the same provisions modeled after the "due process of law feature" of 14th Amendment to the Constitution of the United States.

These laws have been sustained by courts of last resort upon various grounds, but the result reached has been uniform, whether viewed from a religious standpoint or the standpoint of the political and civil welfare of a State's community. They make unlawful on Sunday that which would be deemed in law as innocent if done or performed on any other day of the week; and the laws themselves differ somewhat in terms and purposes. One class seeks to preserve the quiet and peace of the day and prohibits only the carrying on of such trades or avocations or the doing of such work or labor as the legislature deems to be of a peace disturbing nature; while another class seeks to provide a day of general rest from toil, and prohibits in general terms, all manner of work or labor on the first day of theweek, commonly called Sunday, but making a general exception in case of works of necessity or charity, and

extending in some instances, exemption to certain classes of trades or avocations in number great or small, as the legislature may, in its judgment, determine to be necessary.

Nor does an exemption from the operation of the law, of persons belonging to a religious society by whom any other day than the first day of the week is observed as a Sabbath, operate to render the law invalid on the ground of class legislation. Nor will the mere fact that certain trades or avocations are exempted from the operation of such a law invalidate the law, since it is for the legislature to say what may be or what may not be lawfully done on the day set apart for general rest or religious observance; it is for the legislature to say what trades or avocations shall be deemed and what shall not be deemed in law to be works of necessity or charity.

The legislature is the sole judge of the policy and expediency of the laws and of the classes selected as subject to or exempted from their operation.

State Authorities:

State vs. Wellett, 54 Mo. App. 310;
State vs. Ohmer, 34 Mo. App. 115;
Peo vs. Hanover, 149 N. Y. 195;
Lindenmuller vs. People, 33 Barb. 548;
Quarles vs. Arkansas, 14 L. R. A. 192 and note;
Judefind vs. State, 22 L. R. A. 721 (Md.);
Bohl vs. State, 3 Tex. App. 683;
Tiedman on Pol. Powers, 184;
Cooley Const. Law, 6th Ed., 153-154;

Liberman vs. State, 26 Neb. 464;
Parker vs. State, 76 Lea, 476;
Ex Parte Andrews, 18 Cal. 679;
Bosworth vs. Swansey, 10 Neb. 363;
Com. vs. Harrison, 11 Gray, 308;
McPherson vs. Vil. of Chebause, 114 Ill. 46;
Com. vs. Hyneman, 101 Mass. 30;
Bucher vs. Fitchburg Ry., 131 Mass. 156;
Day vs. Highland St. Ry. Co., 135 Mass. 113;
Mueller vs. State, 76 Ind. 310;
Johns vs. State, 78 Ind. 332;
Bloom vs. Richards, 2 Oh. St. 387;
Scales vs. State, 47 Ark. 259;
Troewert vs. Decker, 51 Wis. 46;
Frolickstein vs. Mayer, 40 Ala. 725;
State vs. Railway Company, 24 W. Va. 783;
Shipley vs. State, 32 S. W. 489, (Ark.);
Swan vs. Swan, 21 Fed. 299;
State vs. Ludwig, 21 Minn. 202;

A shop is kept open on the Lord's day * * within the meaning of the statute, if all who please can obtain access thereto to buy, although the entrance is closed

Commonwealth vs. Harrison, 11 Gray, 308.

"The clause in the Constitution guaranteeing

the right of acquiring property does not deprive the legislature of the power of prescribing the mode of acquisition or of regulating the conduct and relations of the members of society in respect to property rights."

Ex parte Andrews, 18 Cal. 679.

The exemption from the operation of the Sunday laws of such persons as conscientiously observe the seventh day of the week as the Sabbath, does not grant immunities to one class which, upon the same terms, shall not apply to all, and is constitutional and valid.

Johnson vs. State, 78 Ind. 332;
Liberman vs. State, 26 Neb. 464.

A Sunday statute exempting druggists and others from the operation of its provisions is not unconstitutional, as a denial of equal rights, or as a special law.

Bohl vs. State, 3 Tex. App. 683.

A definition of necessary work meeting the requirements of the different classes is hardly possible, but it is not enough that it should be more convenient to do the work on Sunday than other days; it should be unforeseen, or if unforeseen, such as could not be provided against, and the necessity must not be of the party's own creation.

The state makes a *prima facie* case by proving that the defendant was prosecuting his work, not apparently a work of necessity; if it was a work of necessity, such as comes within

the exemption of the statute, the burden to show it is cast upon the defendant. The usual employment of a barber followed on Sunday as on other days of the week, is the performance of work prohibited by the Sunday statutes of Missouri.

State vs. Wellett, 54 Mo. App. 310.

In the case just cited the statute under which defendant was prosecuted for working at his trade as a barber on Sunday, provided as follows: "Every person who shall either labor himself or compel or permit his apprentices or servants or any other under his charge or control to labor or perform any work other than household offices of daily necessity or other works of necessity or charity * * shall be deemed guilty of a misdemeanor." The court below tried the case without a jury and held that the work done by defendant did not come within the exemption, and was not a work of necessity.

The validity of Sunday laws has been uniformly recognized by this Court. Such laws are a legitimate exercise of the police power of the State.

Hennington vs. Georgia, 163 U. S. 299;
United States vs. Ball, 163 U. S. 671;
Stone vs. United States, 167 U. S. 195;
United States vs. Gates, 148 U. S. 134;
Monroe Cattle Co. vs. Becker, 147 U. S. 56;
Ball vs. U. S., 140 U. S. 131;

Street vs. U. S., 133 U. S. 306;
Gumbell vs. Pitkin, 124 U. S. 146;
Gibbs & Sterrett Manf. Co. vs. Brucker, 111 U. S. 597;
Pence vs. Langdon, 99 U. S. 578;
Powhattan Steamboat Co. vs. R. R. Co., 24 How. 247;
Phil., Wil. & Bal. R. R. Co. vs. Towboat Co., 23 How. 209;

This Court, speaking in *Phil., Wil. & Bal. R. Co. vs. Towboat Co., supra*, used the following language:

> "The law relating to the observance of Sunday defines the duty of a citizen of the state and to the state only For a breach of the duty, he is liable to the fine or penalty imposed by the statute and nothing more."

SUNDAY LAWS AS APPLIED TO BARBERS.

Sunday laws forbidding in general terms all manner of work or labor on Sunday except works of necessity and charity, apply to the ordinary trade or avocation of a barber, and such usual trade or avocation is not a work of necessity or charity within the meaning of the statutory exceptions.

State vs. Frederick, 45 Ark. 347;
Commonwealth vs. Waldman, 140 Pa. St. 89;
Commonwealth vs. Williams, 1 Pearson. 61 (Pa.);
Phillips vs. Innes, 4 Clark & Fin. 234;

Commonwealth vs. Dextra, 143 Mass. 28

People ex rel. Hobach vs. Sheriff Kings Co., 13 Misc. R. 587;

People vs. Belleti (Mich.) 22 L. R. A. 696;

See, also, 15 *Central Law Journal,* 145;

The equal privileges or immunities of citizens are not violated by prohibiting the business of a barber on Sunday under greater penalties than those imposed upon other business, or because an exception is made to those who conscientiously observe the seventh day of the week as the Sabbath, nor is such a statute invalid as class legislation.

People vs. Bellett, 22 L. R. A. 696 (Mich.)

"It was not necessary that the indictment allege that it (barbering) was not a work of necessity or charity. The courts will take judicial notice that the shaving of his customer by a barber is a worldly labor or work done by him in the course of his ordinary calling, and not within the exception of the statute."

State vs. Frederick, 45 Ark. 347.

"It is illegal for a barber to shave persons on Sunday. The fact that they were sick on Saturday, and the barber shaved them the next day as a matter of accommodation, without compensation, makes no difference. The act declares whenever any person shall do or perform any worldly employment or business whatsoever on the Lord's Day, commonly called

> Sunday, works of necessity and charity only except, etc. I cannot, after the most careful consideration, bring my mind to believe that a barber is any more authorized or directed by law to keep his shop open and pursue his daily avocation on Sunday, than the blacksmith or cabinetmaker. It is true, that the trade is less noisy, and not so likely to disturb the community as the others, but it is not less noisy than that of a tailor or watchmaker. It is more immediately connected with personal comfort and cleanliness than those other avocations, but not more so than that of laundress. * * * If it is found to be essential to the convenience of society that it should be pursued, the people can call on the legislature to change the law."
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> *Commonwealth vs. Williams,* Pearson, 61 (Pa.).

In *Commonwealth vs. Dextra,* 143 Mass. 28, a conviction was sustained in the case of a barber indicted for keeping open his shop for the purpose of carrying on his business, and it was there held that, under the Massachusetts act, the *keeping open* of the shop on the Lord's day for the purpose of doing business therein, is prohibited, whether the business is one of necessity or charity, or not.

The cases cited by plaintiff in error are not in point and cannot be considered as authority in considering the question at bar.

In the case of *Eden vs. People,* 161 Ill. 296, cited by plaintiff in error, it was conceded in the argu-

ment that if the legislature had enacted a law prohibiting all business on Sunday, its validity could not be questioned, and the court point out the difference in the Illinois law and that of other States having laws practically similar to the Minnesota law, and say:

> "This state has not followed the other states in the adoption of the English statute, but we have legislated on this subject for ourselves in a manner thought to be for the best interests of our people. Paragraph 261, Crim. Code, is as follows: 'Whoever disturbs the peace and good order of society, by labor, works of necessity and charity excepted, or by any amusement * * * on Sunday, * * * shall be fined.' (Then follow a number of exceptions) * * * There is a wide and well marked distinction between the English statutes and ours. The English statute prohibits labor and business on Sunday, while our statute merely prohibits labor and amusements which disturb the peace and good order of society. * * *
>
> "By the act in question an attempt has been made by the legislature to enact a radical change in the law as to a class of the laboring elements of the state, that is to say, the barber, and it is provided, 'that it shall be unlawful for any person or persons to keep open any barber shop or carry on the business of shaving, hair-cutting or tonsorial work on Sunday within this state,' and providing a penalty not to exceed $200 for each and every offense. * * *
>
> "If the public welfare of the state demands that all business or labor of every description, excepting works of necessity and charity shall cease on Sunday, * * * the legislature

> has the power to enact a law requiring all persons to refrain from their ordinary callings on that Day, * * * but when the legislature undertakes to single out one class of labor, and that alone, it transcends its legitimate powers."

In the case of *City of Tacoma vs. Krech*, 46 Pac. 255, cited by plaintiff in error, defendant was convicted of violating the ordinance of the City of Tacoma which prohibited barbers from pursuing their calling of shaving or doing any work in connection with their trade for compensation on Sunday. Sec. 7250 of the Statutes of Washington provides that places of amusements be closed on Sunday, and section 7251 provides, that it shall be unlawful for any person or persons of this State to open on Sunday for the purpose of trade or sale of goods, wares or merchandise, any shop, store or building or place of business whatsoever, with certain exceptions.

It was held in this case that the ordinance was invalid and of no binding force. Manifestly the ordinance was in conflict with the general State enactment, and the state constitution. The Sunday law applied only to places *where goods are offered for sale*, and it was so held.

In the case of *People vs. Jentzsch*, 32 L. R. A. 664, cited by plaintiff in error, the Supreme Court of California held that the act prohibiting a barber from keeping open his shop on Sunday was special legislation and invalid. But under the Sunday laws as they stood at the time this case was decided, any laborer in California, except a barber, could labor on Sunday with impunity. The act of 1893

provides that "every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven, and it shall be unlawful for any *employer* of labor to cause his employes or any of them, to work more than six days in seven, provided however, the provisions of this law should not apply to any case of emergency."

Any person violating the provisions of the act was declared to be guilty of a misdemeanor. It will be seen that this Sunday law was aimed at the employer, not at the employe, while the law considered in the Jentzsch case provided that "every person who, as proprietor, manager, lessee, employe or agent, keeps open or conducts * * * any barber shop, * * * or who engages at work or labor as a barber in any such shop * * * on Sunday, or a legal holiday, after 12 o'clock m. of said day, shall be deemed guilty of a misdemeanor." This act clearly discriminates against the class of barbers.

The case of *State vs. Granneman*, 33 S. W. 784, is cited by plaintiff in error.

Attention was called *supra*, in the case of *State vs. Wellett*, to the Missouri law as it stood at the time that case was decided. Subsequently, and in 1895, an act was passed making it a misdemeanor for any person to carry on the business of barbering on Sunday, and providing a penalty. The prosecution of *State vs. Grannaman* was instituted, and the law was attacked on the ground that it violated the provision of the state constitution which prohibited local and special legislation, where a general law

could be made applicable, and providing that whether a general law could have been made applicable in any case, must be a judicial question, and as such be judicially determined without regard to any legislative assertion on that subject. It was held in that case that barbering is labor. The court there say:

> "The policy of our laws is to compel the observance of Sunday as a day of rest, and if this may be done by a general law applicable alike to all classes and kinds of labor, then the act falls within the inhibition of the constitution; * * * that a general law prohibiting all kinds of labor on Sunday cannot only be passed but that we have such a law now on our statute books is indisputable."

It will be observed in the Granneman case, that with a general law on the statute books, a prosecution was instituted under the special act; while the complaint in the case at bar was drawn under the general law and specifically alleges "That the said Paul J. Petit then and there being, did willfully, unlawfully and wrongfully do and perform labor on said day * * * and that Paul J. Petit did then and there keep open a barber shop for the purpose of cutting hair and shaving beards * * * and did then and there * * * shave with a razor, the face and beard of one John Down, * * * which said labor * * * was not then and there a work of necessity or charity. * * *"

Nor is the law in conflict with the 14th Amendment to the Constitution of the United States, which

does not prohibit legislation which is limited either in the object to which it is directed or in the territory within which it is to operate; nor can the statute be said to be class legislation in violation of the same, nor does the law operate to deprive plaintiff in error of property, without due process of law.

Hayes vs. Missouri, 120 U. S. 69;
Missouri vs. Lewis, 101 U. S. 22;
Barbier vs. Connolly, 113 U. S. 27;
Missouri Pac. Ry. Co. vs. Mackey, 127 U. S. 205;
Lavelle vs. St. Paul, Minneapolis & W. R. R. Co., 40 Minn. 249;
Johnson vs. St. Paul & Duluth R. R. Co. 40 Minn. 222.
Beer Co. vs. Mass. 97 U. S. 25;
Dent vs. West Va., 29 U. S. 124;
Mo. v. Lewis, 101 U. S. 22;
Yick Wo vs. Hopkins, 118 U. S. 370;
R. R. Co. v. Humes, 115 U. S. 512;
M. & St. L. Ry. Co. vs. Beckwith, 129 U. S. 26;
Soon Hing vs. Crowley, 113 U. S. 703;
Powell vs. Pa., 127 U. S. 678;
Mugler vs. Kan., 123 U. S. 663.

The case at bar was tried by the Court below without a jury. Plaintiff in error offered no evidence tending to show that at the time charged he was engaged upon a work of necessity or charity. In fact he offered no evidence at all, but rested his case on

the *prima facie* showing made by the State, and the Court was, under all the authorities, warranted in finding that the act charged was not one of necessity or charity; the general finding of guilty found all of the material facts charged in the complaint to be true.

But conceding, for the purposes of argument only, that the proviso of March 7th, 1887, to the Minnesota Sunday law, providing that "the keeping open of the barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity," is invalid as class legislation, its invalidity would not operate to invalidate the remaining portion of the statute which prohibits all labor, that of barbers among others, on Sunday excepting only works of necessity or charity.

The prosecution was contested mainly upon the ground that the proviso of 1887 was unconstitutional, but the prosecution was brought squarely within the terms of that portion of the general Sunday law, the validity of which must be conceded.

The utmost plaintiff in error could have claimed in this Court is that the proviso of 1887 is invalid as being class legislation, in that it applies a different rule to the class of barbers, denying to them alone the right to have a jury determine in each case where a barber is prosecuted for keeping his shop open on Sunday for the purpose of cutting hair and shaving beards, whether or not the act charged was a work of necessity or charity. It does not alter the rule, however, where a barber is prosecuted for actually

shaving or cutting the hair of a customer on Sunday. He is still liable to prosecution under the conceded general portions of the Sunday law. The complaint in the case at bar charged the keeping open of a barber shop on Sunday for the purpose of shaving beards and cutting hair, as well as the actual shaving of a customer on that day, and it charges that said labor was not one of necessity or charity.

We submit that any point which plaintiff in error might have raised on the validity of the proviso of 1887 as applied to the case at bar, he has now waived it by neglecting at the trial to offer evidence to show that the act of keeping open the barber shop on Sunday, as charged in the complaint, was a work of necessity or charity. Had he made a tender of such evidence and had the court refused to admit the same, the point which he makes here might have been saved, but not otherwise.

But we contend that the legislature had full power to declare what act shall be deemed and what not deemed, works of necessity or charity within the meaning of the law.

CONCLUSION.

In conclusion we contend:

First: That Section 6513 of the General Statutes of Minnesota, 1894, is not void for the reason that the proviso of 1887 is class legislation.

Second: That the proviso of 1887 is valid; that the legislature has the power to determine with reference to the Sunday enactment, what shall be

deemed and what shall not be deemed works of necessity and charity, within the meaning of the exception; and that this proviso is not class legislation within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Third: That the entire Sunday statute of Minnesota, including the proviso, is valid, and that its exercise is within the lawful police powers of the State.

Fourth: That plaintiff in error has waived any question which might have been raised had he offered evidence on the trial tending to show that the action complained of was a work of necessity or charity within the exception of the statute.

For the reasons advanced, we respectfully urge that the judgment hereunder review be affirmed.

W. B. DOUGLAS,
Attorney General of Minnesota.

C. W. SOMERBY,
Ass't Att'y Gen.

Attorneys for Defendant in Error.